**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 445 OF 2005.**

1. Smt. Rajaram Shambu Govekar,
(since deceased represented by
her legal heirs/legal representatives)
and others. .... Petitioners.

Versus

Ulhas Rajaram Karpe,
resident of Sanquelim, Goa. .... Respondent.

Shri A. D. Bhobe, Advocate for the Petitioners.

Shri R.G. Ramani, Advocate for the Respondent.

**CORAM: R.M.S. KHANDEPARKAR, J.**

**DATE: 27th JANUARY, 2006.**

**P.C.:**

Heard the Advocates for the parties.

2. The petitioner challenges the Orders passed by the courts below rejecting the application filed under Order 9 Rule 13 of C.P.C. for setting aside the ex-parte decree as well as for confirmation of the said order by the lower appellate court. The impugned orders disclose concurrent findings relating to the failure of the petitioner to take appropriate steps to contest the proceedings inspite of the withdrawal of the wakalatnama filed on behalf of the petitioner and other defendants in the suit. Undisputedly the

Advocate who was appearing for the petitioner had withdrawn his wakalatnama after issuing necessary notice in that regard to the Power of Attorney holder of the petitioner. It was the contention of the petitioner that the fact about withdrawal of wakalatnama came to the knowledge of the petitioner in December, 2002 consequent to the intimation in that regard by the Power of Attorney holder. It is not the case of the petitioner that despite of he having appointed power of attorney for him to act and represent him in the proceedings in the suit, that either he was personally following the proceedings in the suit or getting necessary information in that regard from time to time from his Power of Attorney. On the contrary the averments in the petition for condonation of delay in filing the application under O.9 R.13 CP.C. disclose that till last week of December, 2002 his son, who was the power of attorney holder, was looking after the proceedings in the suit and it was only in the last week of December, 2002 his power of attorney holder told him that the proceedings thereafter should be attended to by the petitioner. In other words till last week of December, 2002 the power of attorney holder of the petitioner was looking after the proceedings in the matter and was fully aware of the withdrawal of the wakalatnama of the Advocate, and yet he had not taken any step to engage any other Advocate for the parties. This has been held as sufficient knowledge to the petitioner about the fact of withdrawal of wakalatnama by the Advocate as the Advocate had served proper notice on the power of

attorney of the petitioner and no fault can be found with the said concurrent findings arrived by both the courts below. The said finding is clearly borne out from the record and further it apparently discloses that it was only in the last week of December, 2002 that the petitioner thought for the first time of filing of the application for setting aside the ex-parte decree inspite of the fact that he was fully aware of the ex-parte proceedings much prior to that date. In these circumstances, the concurrent findings of facts arrived at by both the courts below cannot be found fault with and the impugned orders do not disclose any illegality nor any error in exercise of jurisdiction by the Courts below so as to warrant interference by this Court in writ jurisdiction. Therefore there is no case for interference under Article 227 of the Constitution.

3. Learned Advocate for the petitioner sought to rely upon the decision of the learned Single Judge of this Court in the case of ***Dattusing Giridharsingh Rajput (Thakur) v. Bhagwant Devasthan, Barshi and others*** reported in A.I.R.2005 86. All the observations in the said decision were in the facts of that case where the Advocate appearing for the party had filed a pursis stating that he had no instructions in the matter and the matter had proceeded ex-parte without ascertaining whether the party had sufficient knowledge about the reluctance of the Advocate to represent the party. Being so, the decision is of no help to the petitioner and is not

applicable to the case in had.

4. The petition is therefore rejected.

**R.M.S. KHANDEPARKAR, J.**

**sl.**